

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE
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November 14, 2006

Agenda ID #6163
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 06-01-005

This is the proposed decision of Administrative Law Judge (ALJ) Christine Walwyn. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's **Rules of Practice and Procedure** (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to ALJ Walwyn at cmw@cpuc.ca.gov. All parties must serve hard copies on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **PROPOSED DECISION OF ALJ WALWYN** (Mailed 11/14/2006)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of Application of
CALIFORNIA-AMERICAN WATER SERVICE
COMPANY (U 210 W) for an order authorizing it
to increase its rates for water service in its
Los Angeles District to increase revenues by
\$2,020,466 or 10.88% in the year 2007; \$634,659 or
3.08% in the year 2008; and \$666,422 or 3.14% in
the year 2009.

Application 06-01-005
(Filed January 9, 2006)

OPINION GRANTING INTERIM RATE RELIEF**I. Summary**

Pursuant to Section 455.2 of the Public Utilities Code (Section 455.2), this decision grants interim rate relief to California-American Water Company (Cal-Am) for its Los Angeles district on January 1, 2007. The interim rate relief is based on the rate of inflation as compared to existing rates for the Los Angeles district, will be subject to refund, and will be adjusted upward or downward, back to January 1, 2007, consistent with the final rates adopted by the Commission in the pending general rate case.¹

We find it is in the public interest to grant interim rate relief to Cal-Am. While Cal-Am is responsible for some of the delay in the procedural schedule,

¹ The rate of inflation is to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor.

we find its actions do not warrant denying interim relief. In addition, while there are rate scenarios in the pending partial settlement between Cal-Am and the Division of Ratepayer Advocates (DRA) that would lead to a rate change less than the rate of inflation, Cal-Am has met our rate case plan (RCP) standard for demonstrating that it has made a substantial showing in its application supporting a rate increase at least equal to the rate of inflation.

II. Cal-Am's Request for Interim Rate Relief

On July 31, 2006, Cal-Am filed its motion for interim rate relief.² No party protests this motion.

Cal-Am states that Section 455.2(a) provides for interim rate relief when the Commission is unable to issue its final decision on a general rate case (GRC) application of a Class A water utility in a manner that ensures that the decision becomes effective on the first day of the first test year in the application.³ The first day in this proceeding is January 1, 2007. Further, Cal-Am states it has met all requirements for interim rate relief contained in Section 455.2(b), which provides:

(b) If the commission's decision is not effective in accordance with subdivision (a), the applicant may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates. The interim rates shall be effective on the first day of the test year in the general rate case application. These interim rates shall be subject to refund and shall be adjusted upward or

² This date was set in the May 22, 2006 scoping memo and is the same date as the opening briefs.

³ A Class A water utility is defined as a company with over 10,000 service connections.

downward back to the interim rate effective date, consistent with the final rates adopted by the commission. The commission may authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest. If the presiding officer in the case determines that the commission's decision cannot become effective on the first day of the first test year due to actions by the water corporation, the presiding officer or commission may require a different effective date for the interim rates or final rates.

In its motion, Cal-Am states it has made a substantial showing in this proceeding for a rate increase that is at least equal to the rate of inflation. It also cites to its pending partial revenue requirement settlement with DRA as support for this assertion.

Cal-Am next addresses the issue of procedural delay. It states that while the procedural schedule has been delayed approximately two months from the schedule prescribed by the rate case plan adopted by the Commission in D.04-06-018, this delay is caused primarily by parties' early settlement efforts and their requests for a revised rate design. Therefore, Cal-Am asserts that the Commission should not find that Cal-Am is primarily responsible for the delay.

Further, Cal-Am states that the present procedural schedule provides for a proposed decision to be mailed in November 2006 and a final decision issued in December 2006. Absent the filing of an alternate decision, this schedule should allow the Commission's decision to be effective on January 1, 2007.

Finally, Cal-Am asserts that its request for interim rate relief is in the public interest because the Commission should ensure that Cal-Am is not penalized for actively responding to the concerns of customers and intervenors, collaborating at customers' requests on a revised rate design that is beneficial to all customers in the Los Angeles district, and engaging in early discussions in the nature of settlement.

III. Discussion

The criteria we set forth in D.04-06-018 for interim rate relief under Section 455.2⁴ require that:

- the utility demonstrate that it has made a substantial showing in its application supporting a rate increase at least equal to the rate of inflation;
- the Commission determine whether interim relief is “in the public interest”; and
- the presiding officer’s decision address whether the delay in completing the GRC proceeding is “due to actions by the water corporation” and, if so, the presiding officer’s decision shall specify the utility’s actions that caused the delay and shall include a proposed effective date for interim or final rates. (See Section III.E., *mimeo.* at 21.)

On the first criterion, Cal-Am has made a detailed showing in its application in support of rate increases for the Los Angeles district that are substantially higher than the rate of inflation; it supports its request with rate tables, workpapers, and sponsoring testimony. However, the proposed partial settlement agreement between Cal-Am and DRA, Exhibit 45, does contain rate scenarios that could result in rates that are below the rate of inflation. The primary cause of this would be the use of updated numbers for the cost of

⁴ There have also been several individual cases that have addressed requests for interim rate relief under Section 455.2. (See *In re Cal-Am*, D.05-02-007 (February 10, 2005); *In re California Water Service*, D.03-10-072 (October 30, 2003); *In re San Jose Water Co.*, D.03-12-007 (December 4, 2003); *In re Cal-Am*, D.04-05-023 (May 12, 2004); *In re California Water Service*, D.04-09-038 (September 23, 2004); and *In re Cal-Am*, D.05-12-024.

purchased water.⁵ Section 455.2(b) does allow the Commission to authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest.

In D.04-06-018, we discussed the requirement of Section 454 that all rate increases be “justified” through a showing to the Commission and established as our standard for the level authorized for interim rate relief that the utility demonstrate it has made a substantial showing in the application supporting a rate increase at least equal to the rate of inflation. Cal-Am’s showing, and the proposed partial settlement, are contested and the merits will not be addressed until a final decision is proposed. Applying the standard set in D.04-06-018, we find that while it is not clear that the final rate increase will be above the rate of inflation, Cal-Am has made the requisite substantial showing in its application. Therefore, we find Cal-Am has met its burden of proof on this criterion.⁶

On the second criterion, public interest, Cal-Am argues that the Commission’s case law supports granting interim rate relief in order to protect shareholders where the utility is not the primary cause of any procedural delay. We will first address the matter of procedural delay prior to making a finding on public interest.

The causes of procedural delay in this proceeding are discussed in detail in two rulings, the April 25, 2006 “Assigned Commissioner’s and Administrative Law Judge’s Ruling Requiring Cal-Am to Provide Proper Customer Notice of its

⁵ Exhibit 45, Section 4.1, page 7.

⁶ See D.04-06-018, mimeo. at 21. The Commission is considering a rulemaking proceeding to examine changes to the RCP adopted in D.04-06-018 and may want to consider a different criterion for justifying the level of the interim rate increase.

GRC Application and Setting a PHC on May 12, 2006 to Discuss a Revised Procedural Schedule” and the May 22, 2006 “Assigned Commissioner’s Scoping Memo and Ruling.” In the April 25 ruling, we found that Cal-Am’s customer notice did not meet the statutory requirements of Section 454(a) and our Rules of Practice and Procedure because the notice did not include (a) the total revenue requirement as a dollar and percentage amount and (b) the rate change Cal-Am proposes for each customer class. We found that Cal-Am must renote its customers before we could proceed to hold evidentiary hearings.

Cal-Am’s failure to provide customer notice of the total revenue requirement requested in its application is solely its responsibility. On the issue of customer notice of the rate change for each customer class, Cal-Am’s assertion that this occurred due to its offer to revise its rate design to accommodate the concerns of customers and intervenors has merit.

Following the procedural delay caused by the need to re-notice customers and to bifurcate the proceeding to consider rate design in a later phase of this proceeding, we set a procedural schedule that did provide for the evidentiary record on the revenue requirement phase to be submitted on August 4, 2006, a proposed decision to be issued November 3, 2006, and a final Commission decision by December 2006.⁷

When there is procedural delay caused by the utility, Section 455.2 requires the presiding officer or commission to consider whether a different effective date for the interim rates should be adopted. We find that while there was procedural delay in this proceeding, and Cal-Am bears the primary

⁷ The proceeding actually submitted on August 11, 2006, allowing for a final decision in December 2006.

responsibility for the delay, the May 22, 2006 adopted procedural schedule was generally adhered to by the parties and does provide for a final Commission decision prior to January 1, 2007. In addition, no party has protested Cal-Am's motion or recommended a different effective date for interim rate relief.

Therefore, if the Commission does not reach a final decision prior to January 1, 2007, it is in the public interest to authorize Cal-Am interim rate relief effective January 1, 2007.

The interim increase shall be based on the rate of inflation as compared to existing rates for the Los Angeles district, with the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor, shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in this proceeding.

IV. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Christine M. Walwyn is the assigned Administrative Law Judge in this proceeding.

V. Comments on Proposed Decision

The proposed decision of the administrative law judge was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed by _____. Replies were filed by _____.

Findings of Fact

1. On July 31, 2006, Cal-Am filed a motion for interim rates effective January 1, 2007.
2. No party protested this motion or recommended a different level of interim rate increase or effective date for interim rate relief.

3. Cal-Am has made a substantial showing in its application supporting a rate increase at least equal to the rate of inflation.

4. In the pending partial settlement between Cal-Am and DRA, there are rate scenarios below the rate of inflation.

5. There are procedural delays in the schedule of this proceeding caused in part by deficiencies in the customer notice provided by Cal-Am.

6. Following the April 25, 2006 ruling requiring Cal-Am to provide re-notice to its customers, a revised procedural schedule was adopted that provides for a proposed decision to be issued in November 2006 and a final Commission decision in December 2006.

Conclusions of Law

1. Cal-Am is eligible to seek interim rate relief under Public Utilities Code Section 455.2 for its GRC application for the Los Angeles district.

2. Cal-Am has met the criterion established in D.04-06-018 of a substantial showing in its application supporting a rate increase that is at least equal to the rate of inflation.

3. While Cal-Am has been the cause of some of the procedural delay in this proceeding, we weigh the facts in this case and find that it is in the public interest to grant Cal-Am interim rate relief effective January 1, 2007.

4. Pursuant to Section 455.2(b), the interim rate mechanism is subject to refund, and shall be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in this proceeding.

5. This decision should be effective immediately.

O R D E R**IT IS ORDERED** that:

1. California-American Water Company (Cal-Am) shall file, by advice letter within five days, a tariff with the Commission implementing interim rates in its Los Angeles district effective January 1, 2007. The interim increase shall be based on the rate of inflation as compared to existing rates for each district (the rate of inflation to be calculated using the most recent Consumer Price Index maintained by the U.S. Department of Labor), shall be subject to refund, and shall be adjusted upward or downward, back to the effective date, consistent with the final rates adopted by the Commission in this proceeding.

2. Upon tariff approval, Cal-Am shall notify its customers in writing of the interim rate increase. The notice will reference this interim decision and explicitly state that the interim rates are subject to refund and will be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the Commission.

3. This proceeding remains open for resolution of the pending application.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated November 14, 2006, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

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Last Update on 14-NOV-2006 by: SMJ
A0601005 LIST

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